

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE EX PARTE APPLICATION OF : 24 MC _____
NAVIOS SOUTH AMERICAN :
LOGISTICS INC. :
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PETITION FOR DISCOVERY ASSISTANCE
ORDER PURSUANT TO 28 U.S.C. § 1782

Petitioner, NAVIOS SOUTH AMERICAN LOGISTICS INC. (“Petitioner” or “NSAL”), by and through its undersigned counsel, respectfully petitions this Court for an Ex Parte Order pursuant to 28 U.S.C. § 1782(a) allowing the Petitioner to issue subpoenas to the following entities: American Express Bank, Banco Santander, Bank of New York Mellon, Boca World LLC, Citibank, Citimortgage Inc., Standard Bank, UBS Ltd. and Wells Fargo Bank (collectively the “Third Parties”).

The requested subpoenas are to be issued pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure directing the Third Parties to produce documents and information and, if necessary following Petitioner’s review of the documents and information produced pursuant to such subpoenas, to appear for depositions to provide testimony, for use in a foreign legal proceeding presently pending in the High Court for the Republic of the Marshall Islands.

Petitioner makes this application to seek discovery assistance in connection with the aforesaid legal proceeding against Claudio Pablo Lopez and Carlos Augusto Lopez (“Defendants”). Petitioner has asserted seven (7) claims against Defendants concerning their breach of duties as directors and executives offices of Petitioner, fraud, unjust enrichment, civil conspiracy, and conversion.

Specifically, the Defendants engaged in a scheme to defraud Petitioner out of millions of dollars. Pursuant to their scheme, Defendants – who were Directors and executive officers of

Petitioner – directed individuals at the Company to create fake and forged invoices and to falsify accounting records in order to conceal improper payments made by Petitioner, at Defendants’ direction, to Defendants and members of Defendants’ family in Buenos Aires, Argentina. The Defendants also caused Petitioner substantial harm by authorizing a family member to disclose confidential information regarding bunker fuel supplier bids to one of Petitioner’s fuel suppliers that was owned and/or controlled by a family member related to the Defendants. Defendants thus corrupted and rigged the Petitioner’s fuel bidding process, impermissibly steered Petitioner’s funds to their family, forced Petitioner to receive substandard and insufficient services, and caused Petitioner to incur losses based on the unfavorable terms of the bunker fuel contracts. Additionally, the Defendants further looted Petitioner’s coffers by using Petitioner’s “petty cash”, credit cards and other accounts for personal expenses entirely unconnected to Petitioner’s business.

The Defendants’ acts and omission as aforesaid have resulted in damages suffered by Petitioner in the sum of \$10,092,571, as best as may be presently estimated.

As set forth in the accompanying Memorandum of Law and Declaration of Kevin J. Lennon, the Petition meets all of the statutory and discretionary requirements under 28 U.S.C. § 1782(a). To wit,

1. The Third Parties are all “found” in this District, or may be served with a subpoena within the jurisdictional limits of this District, for the purposes of 28 U.S.C. § 1782(a);
2. Petitioner seeks the discovery for use in a litigation proceeding currently pending in the Republic of the Marshall Islands;
3. As the party pursuing recovery on the claims against Claudio Pablo Lopez and Carlos Augusto Lopez in the Marshall Islands proceeding, Petitioner has an undeniable interest in the foreign proceeding;

4. The Third Parties to whom Petitioner seeks to issue subpoenas are not now, and are not likely to be, parties to the Marshall Islands proceeding;

5. Petitioner is not seeking discovery that could otherwise be obtained in the Marshall Islands proceeding;

6. Petitioner is not attempting to circumvent any rules or requirements of the Marshall Islands proceeding;

7. Petitioner is not otherwise attempting to abuse the right to conduct discovery in a federal district court for use in a foreign court; and

8. The discovery requested of the named parties is not unduly burdensome or intrusive.

Jurisdiction and Venue

Jurisdiction and venue are proper under 28 U.S.C. § 1782 as this is an application for discovery for use in a foreign proceeding involving documents and information in the possession or control of Third Parties that are currently located within the district, or are within the jurisdictional limits of the Court's subpoena power, which are necessary to assist Petitioner in relation to the prosecution of its claim(s) in the Marshall Islands proceeding.

Supporting Materials

In further support of this Petition, Petitioner submits the accompanying Memorandum of Law; Declaration of Kevin J. Lennon.; proposed subpoenas under the Order, annexed hereto as Exhibit A¹; and a proposed Order as an attachment to this Petition.

¹ Date, time, and other required information to be added to the subpoenas upon the Court granting the relief requested in the Petition.

Prayer for Relief

WHEREFORE, Petitioner respectfully prays that this Court enter an Order:

1. Granting the Petition pursuant to 28 U.S.C. § 1782(a) for discovery from American Express Bank, Banco Santander, Bank of New York Mellon, Boca World LLC, Citibank, Citimortgage Inc., Standard Bank, UBS Ltd. and Wells Fargo Bank;

2. Authorizing Petitioner to take discovery relating to issues identified in this Petition, supporting Memorandum of Law and Declaration of Kevin J. Lennon in accordance with the Federal Rules of Civil Procedure 30 and 45, and the Local Rules of this Court, including by: (i) serving on American Express Bank, Banco Santander, Bank of New York Mellon, Boca World LLC, Citibank, Citimortgage Inc., Standard Bank, UBS Ltd. and Wells Fargo Bank, subpoenas for the production of documents and information, as per the proposed subpoenas attached hereto as Exhibit A; and (ii) serving any additional subpoenas for the production of witnesses for deposition testimony as Petitioner reasonably determines to be appropriate and necessary following review of the documents and information produced in response to the aforesaid subpoenas;

3. Directing American Express Bank, Banco Santander, Bank of New York Mellon, Boca World LLC, Citibank, Citimortgage Inc., Standard Bank, UBS Ltd. and Wells Fargo Bank, to comply with any subpoenas authorized by this Court's Order in accordance with the Federal Rules of Civil Procedure 30 and 45, and the Local Rules of this Court;

4. Appointing the Petitioner's undersigned attorneys, Lennon, Murphy & Phillips, LLC, or a disinterested process server, to issue, sign, and serve any subpoenas authorized by this Court's Order;

5. Ordering that testimony in this matter may be taken before any certified court reporter authorized to take testimony and administer oaths in the State of New York, including by

remote means, and that such court reporters are hereby authorized to take testimony in this matter;
and

6. Providing that this Court shall retain such jurisdiction as is necessary to enforce the terms of any subpoenas authorized and served under this Court's Order, or grant any further relief which may be sought by Petitioner, American Express Bank, Banco Santander, Bank of New York Mellon, Boca World LLC, Citibank, Citimortgage Inc., Standard Bank, UBS Ltd., Wells Fargo Bank, or any other interested party.

Dated: New York, NY
December 10, 2024

The Petitioner,
NAVIOS SOUTH AMERICAN
LOGISTICS INC.

By: 

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